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**Before the**
**UNITED STATES COPYRIGHT ROYALTY JUDGES**
**LIBRARY OF CONGRESS**
**Washington, D.C.**

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| **In the Matter of:**<br><br>**DETERMINATION OF ROYALTY RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (*Phonorecords IV*)** | **Docket No. 21-CRB-0001-PR (2023-2027)** |

**COPYRIGHT OWNERS' OPPOSITION TO SERVICES' MOTION FOR PROTECTIVE ORDER REGARDING DATA FROM THE MECHANICAL LICENSING COLLECTIVE**

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The National Music Publishers' Association and the Nashville Songwriters Association International (collectively, "Copyright Owners"), through their undersigned counsel, respectfully submit this opposition to the motion (the "Motion") of Amazon.com Services LLC, Apple Inc., Pandora Media, LLC, and Spotify USA Inc (collectively, the "Services") for a protective order concerning provision of information by the Mechanical Licensing Collective ("MLC").

## PRELIMINARY STATEMENT

The Motion asks the Judges to exceed their legal authority and obstruct Copyright Owners from obtaining information lawfully from a nonparticipant for use in this proceeding. Worse yet, the Motion asks the Judges to do so in contravention of statutory and regulatory authority authorizing MLC disclosures. The Motion is a cynical attempt by the Services to repeat in *Phonorecords IV* what they attempted in the *Phonorecords III* remand proceeding: present a misleading royalty picture in their direct case and seek to prevent Copyright Owners from putting the full evidence before the Judges through stonewalling and abusive motion practice.

Moreover, the Services surely know that the relief they request cannot be properly granted, and the Motion is timed and designed to interfere with Copyright Owners' work and sow confusion during the brief time left to complete written direct submissions.[1] The Services have been aware of the statutory authority for MLC disclosures since the Music Modernization Act[2] was enacted in 2018; the Services supported the Register of Copyrights' (the "Register") regulation confirming

[1] Indeed, the Services take the opposite position here than they take in their equally frivolous motion to strike Copyright Owners' rebuttal reports in the *Phonorecords III* remand, where they argue that MLC disclosures have long been available to Copyright Owners: "[t]he Services object to Dr. Eisenach's improper opinions based on his analysis of [their own records], which the Copyright Owners obtained from the MLC *and could have obtained before submitting their initial remand submission*." Reply In Support Of Services' Motion To Strike, *Phonorecords III*, eCRB Docket No. 25614 (Aug. 17, 2021). All emphases herein are added unless noted otherwise.

[2] Public Law 115-264 (Oct. 11, 2018) (the "MMA").

that authority in 2020; and the Services received MLC information shared pursuant to its explicit legal authority in the July 2, 2021 submission in the *Phonorecords III* remand. Still, the Services waited until less than two months before written direct statements are due in this proceeding to file the baseless Motion (meaning that it will not be fully briefed until just over one month before the deadline).

The Motion asks the Judges to restrict Copyright Owners' ability to receive information lawfully disclosed by a nonparticipant and instead only allow Copyright Owners to obtain documents that the Judges command to be produced through a subpoena. The Services provide absolutely no legal basis for what would be an unprecedented limitation and prejudice to Copyright Owners' participation in this proceeding, nor do the Services explain how the Judges have the authority to restrict voluntary sharing of information by a nonparticipant in this way.

Even worse than having no basis in law, this relief sought would directly contravene the MMA and the implementing regulations promulgated by the Register. The MLC was established by Congress and designated by the Register to administer the compulsory mechanical license that is the subject of this proceeding. The statutory authority of the MLC to share information concerning the compulsory license with attorneys in these proceedings was part of the industry compromise that led to the MMA and its landmark advances to further transparency. The MMA explicitly provides that the MLC is authorized to "[g]ather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under [Section 115]." 17 U.S.C. § 115(d)(3)(C)(i)(XI). The MMA further provides that the MLC "shall provide prompt access to electronic and other records pertaining to the administration of a copyright owner's musical works upon reasonable written request of the owner or the authorized representative of the owner." 17 U.S.C. § 115(d)(3)(M)(ii). The Motion is simply not consistent with the MMA.

Information that the MLC has concerns the license that is the subject of this proceeding, and is thus plainly relevant to the proceeding. The MMA recognizes that and authorizes disclosure by the MLC and use in these provisions, which was confirmed by the Register in the implementing regulations. Even the Services recognized this reality in their rulemaking comments, and they proposed the language adopted by the Register, which acknowledges that the MLC (and its service counterpart, the digital licensee coordinator ("DLC")) may disclose any confidential information to "[a]ttorneys and other authorized agents of parties to proceedings before… the Copyright Royalty Judges… subject to an appropriate protective order or agreement." 37 C.F.R. § 210.34(c)(4)(iii). The relief that the Services now request in the wrong forum was not even floated by the Services in the governing rulemaking.

Nor is the Motion consistent with the Judges' own governing rules. The Judges have only limited subpoena power, namely, where their resolution of the proceeding would be substantially impaired without the requested materials. The Judges have noted in the past that subpoenas are not permitted for purposes of building one or more parties' direct cases. The relief sought in the Motion may thus preclude Copyright Owners from receiving any information from the MLC for use in the direct case (and possibly even for rebuttal submissions, since the Judges have found that a determination of what would "substantially impair" resolution is difficult to make in earlier stages of the proceeding). The unnecessary expansion of the subpoena process, as well as cutting off a participant's ability to lawfully gather outside information and build its case, is inconsistent with the Judges' rules and precedent.

The Services offer a number of misleading arguments discussed below, but none can escape the fatal lack of authority, and conflict with other authority, that the Motion suffers. The

Motion should be promptly denied in its entirety as another frivolous and harassing litigation tactic that contravenes clear law.

## STANDARDS ON THE MOTION

The Services state that the Motion is made "pursuant to 17 U.S.C. §§ 801(c), 803(b)(6) and 37 C.F.R. §§ 351.5(b), 351.9(e)." (Mot. at 1.) The relief requested by the Motion is that "[p]articipants must seek information directly from the participant Services through a written discovery request or move for a subpoena to obtain information from the MLC." Proposed Order, *Phonorecords IV*, eCRB Docket No. 25610 (Aug. 18, 2021).[3] None of the cited provisions authorizes the requested relief.

Section 351.9(e) sets out the Judges' subpoena procedure. ("The parties may move the Copyright Royalty Judges to issue a subpoena. The object of the subpoena shall be served with the motion and may appear in response to the motion.") The Motion does not request the grant of a subpoena, but the preclusion of a participant from obtaining information except pursuant to subpoena. Section 351.9(e) provides no authority for the requested preclusion.

Section 351.5(b) provides for discovery *of participants* in rate proceedings. ("A participant in a royalty rate proceeding may request of an opposing participant nonprivileged documents that are directly related to the written direct statement or written rebuttal statement of that participant.") This provision likewise has nothing to do with the relief requested. It provides for discovery of participants. The Motion seeks virtually the opposite, namely a preclusion on the receipt of information voluntarily disclosed by a nonparticipant.

[3] While the Services feign that this is a neutral request, the phrasing of their Proposed Order, namely that information must be sought from participant *Service*s, underscores that the Motion is about obstructing Copyright Owners.

Section 803(b)(6) provides for the Judges to issue regulations to govern their proceedings, including the two regulations cited above, which are the only portions of the subsection that are referenced in the Motion. 17 U.S.C. § 803(b)(6)(C)(v) and (ix). This citation thus duplicates the two regulations cited above and offers no basis for the requested relief.

Lastly, Section 801(c) provides that the Judges, "may make any necessary procedural or evidentiary rulings in any proceeding under this chapter." The Services only reference this subsection once, in the string cite to begin the Motion, and offer no explanation of how it authorizes the relief requested. Section 801(c) is a broad provision, but only authorizes "procedural or evidentiary rulings" that the Judges deem are "necessary." The Services offer no explanation as to how the requested relief would be a necessary procedural or evidentiary ruling. A protective order already exists in this proceeding, one that the Judges have repeatedly held is adequate to protect confidential information. *See, e.g.*, Discovery Order 11, *Web IV*, Docket No. 14-CRB-0001-WR (2016-2020) (Jan. 15, 2015), at 7 (rejecting "assertion that the attorneys-eyes and experts-eyes only limitations on 'RESTRICTED' documents in this proceeding would be insufficient to protect confidential or proprietary documents from disclosure.").

## ARGUMENT

### I. The requested relief has no legal authority

As discussed above, the legal provisions cited by the Services do not provide authority for the relief requested. In a broader sense, the Services also do not explain how it would be appropriate for the Judges to seek to prevent a participant from receiving voluntary disclosure of information from a nonparticipant in order to build its case. In contrast, the Judges have found that discovery limitations have undermined the goals of the statute. *See, e.g.*, Order re Motion to Set Discovery Deadlines and to Compel, *PSS/SDARS III*, eCRB Docket No. 3699 (Aug. 23, 2016),

at 11 (noting Congressional finding "that parties had used the minimal nature of discovery required by statute to compromise the overarching goal of making certain that the Judges, together with the parties, built a record that would firmly support the Judges' final determination"); Order on IPG Motions for Modification, *2004-2009 CD and 1999-2009 SD (consolidated)*, eCRB Docket No. 20214 (Apr. 9, 2015), at 4 n.4 ("Limits on discovery have proved, however, to be a double-edged sword whose backswing results in parties not fully prepared for presentation of evidence at a hearing and surprise or trial-by-ambush practices."). The Motion asks the Judges to compound the problem of limited discovery by gratuitously creating additional limitations in voluntary information gathering. The requested relief is well beyond standard judicial practice or any explicit or implicit legal authority, and should be denied.[4]

## II. The requested relief contravenes explicit statutory and regulatory authority

### A. The requested relief contravenes the MMA

Congress created the MLC and defined its authorities and functions, including expressly to "gather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under this section." 17 U.S.C. § 115(d)(3)(C)(i)(XI). *See also* 17 U.S.C. § 115(d)(3)(M)(ii) (the MLC "shall provide prompt access to electronic and other records pertaining to the administration of a copyright owner's musical works upon reasonable written request of the owner or the authorized representative of the owner.")

The Services misquote an additional provision confirming this authority, 17 U.S.C.

[4] The Services offer no authority for the illogical assertion that the only ways to obtain information in a rate proceeding are (i) discovery requests to a participant; or (ii) subpoenas. The Services analogize to discovery under the Federal Rules of Civil Procedure ("FRCP"), but nothing in the FRCP requires that information be obtained by subpoena, and the notice and opportunity to object provided in Rule 45 does not apply where a subpoena is not required or used. Under the FRCP, nonparties are free to lawfully provide information to parties without a subpoena.

§ 115(d)(8)(A), to argue that the MLC's provision of information in rate proceedings is "subject to 'applicable statutory and regulatory provisions and rulings of the [Judges].'" (Mot. at 5). Despite the Services' creative paraphrasing, the MLC's statutory authority to gather and provide information for the use of a party in this proceedings is *not* subject to rulings of the Judges. The MMA does not make this MLC authority subject to anything, and the implementing regulation only makes the MLC's provision of confidential information "subject to an appropriate protective order or agreement." 37 C.F.R. § 210.34(c)(4)(iii).

Rather, Section 115(d)(8)(A) shows the Motion to be in direct conflict with the MMA, making clear that there are *two different* types of MLC participation in rate proceedings that the MMA explicitly authorizes. First, the MMA authorizes the MLC to voluntarily provide information to individual *Phonorecords* parties for general use in the proceeding ("*may* gather and provide financial and other information for *the use of a party* to [a *Phonorecords*] proceeding.") *Id*. Second, the MMA clarifies that the MLC may also "comply with requests for information as required under applicable statutory and regulatory provisions and rulings of the [Judges]." *Id*. The Motion improperly asks the Judges to try to eliminate the first statutory authority, precluding the MLC from voluntarily gathering and providing information for the use of a party, and limiting the MLC to complying with subpoena rulings of the Judges. Such relief would improperly abrogate the statutory authority of the MLC and participants, and must be denied.

B. The requested relief contravenes the Register's implementing regulations

The impropriety of the Motion is further underscored by the governing regulations. The MMA directed the Register to adopt regulations to provide the appropriate procedures for the MLC's handling of confidential information. 17 U.S.C. § 115(d)(12)(C). After multiple rounds of public comments, the Register issued a rule pursuant to such authority. *See* Treatment of

Confidential Information by the Mechanical Licensing Collective and the Digital Licensee Coordinator, 86 Fed. Reg. 9,003 (Feb. 11, 2021). The regulation provides, in relevant part, that the MLC "may disclose Confidential Information to. . . [a]ttorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement." 37 C.F.R. § 210.34(c)(4)(iii). This regulation was identical to the language proposed by the DLC in its public comments.[5]

Notably, this language tracks the dual MLC participations laid out in 17 U.S.C. § 115(d)(8)(A). The first portion of the regulation addresses the MLC's voluntary disclosure authority ("may disclose… to. . . [a]ttorneys of parties…"), while the second portion addresses the MLC's separate authority to participate in disclosure as "required by court order or subpoena." The Motion's request to abrogate the first authority must be denied.

Section 210.34(c)(4)(iii) is an expanded version of a similar provision authorizing SoundExchange to share confidential information with "[a]ttorneys and other authorized agents of parties to proceedings under 17 U.S.C. 8, 112, 114, acting under an appropriate protective order." 37 C.F.R. § 380.5(c)(4). Despite the Services' attempt to conflate the issues, SoundExchange is

[5] *See* Comments of Digital Licensee Coordinator, Inc. in Response to Notice of Proposed Rulemaking (June 8, 2020), at A-4, available at https://www.regulations.gov/comment/COLC-2020-0004-0010. The Board of Directors of the DLC includes representatives of each of the Services here, and outside counsel for Spotify in this proceeding submitted these comments to the Register as outside counsel for the DLC. Relatedly, the Services state in a footnote (Mot. n. 3) that they have unspecified "concerns" because outside counsel for Copyright Owners also serves as one of the outside counsel firms for the MLC. This is an empty attempt to cast aspersions in the absence of legal grounds for the Motion. The MLC shared information with counsel for Copyright Owners under explicit legal authority that applies regardless of who is counsel for Copyright Owners. This is the precise situation that applies to the Services *vis-à-vis* the DLC, which has parallel authority to disclose confidential information to attorneys in this proceeding, and which retains the same outside counsel as Spotify.

also plainly *not* precluded from voluntarily agreeing to provide information to other rate proceeding participants, and the regulation does not require SoundExchange (or anyone seeking information from SoundExchange) to first be compelled by a subpoena or give notice and opportunity to object to participants or nonparticipants whose data may be disclosed. *See, e.g.*, Order in Response to Motion to Modify Scheduling Order, *Web V*, eCRB Docket No. 3968 (June 13, 2019), at 2 ("timing and substance" of preliminary disclosures in *Web V* explicitly "subject to negotiation between participants."); Order Granting Services' Joint Motion to Compel, *Web IV*, eCRB Docket No. 4026 (Oct. 30, 2014), at 2 (ordering production of documents "that either have been requested by another participant or that SoundExchange has agreed to produce"). In fact, the provision authorizing disclosure in rate proceedings dates from before SoundExchange was even a participant in the rate proceedings and when there were multiple agents who might be disclosing information. Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings, 67 Fed. Reg. 45,275 (July 8, 2002). The requested relief is in direct conflict with the law and longstanding precedent.

C. The requested relief is not consistent with the Judges' limited subpoena power

The cynical endgame of the Services in the Motion becomes clear in light of the limits on what can be obtained by subpoena. The Judges' subpoena power is limited to "commanding a participant or witness to… produce . . . documents… if the [Judges'] resolution of the proceeding would be substantially impaired by the absence of such… production of documents." 17 U.S.C. § 803(b)(6)(C)(ix). The Judges found in *Web III* that subpoenas "are not permitted for purposes of building one or more party's direct cases." Order Denying Issuance of Subpoenas for Nonparty Witnesses, Docket No. 2009-1 Webcasting III, at 2 n.1 (March 5, 2010) (https://www.crb.gov/orders/order-denying-issuance-subpoenas-3-5-10.pdf) When this proposition was challenged in

*Web IV*, the Judges did not reach the question of whether subpoenas are allowed at that stage, but nonetheless denied the subpoena request because it was too early to know if the "substantial impairment" test would be met. Order Denying Pandora/NAB Motions for Subpoenas, *Web IV*, eCRB Docket No. 4041 (Apr. 3, 2014), at 4. In either case, the limited subpoena authority drastically limits what can be obtained by subpoena. Thus, what the Services disingenuously frame as seeking notice and opportunity to object is in fact a request to substantially prejudice Copyright Owners in lawfully gathering information for the proceeding.[6]

Limiting Copyright Owners' private, lawful gathering of information to this standard has no authority in law, and turns the subpoena process on its head. A subpoena is what a party could turn to if it cannot obtain information voluntarily. Indeed, issuing a subpoena commanding production by a nonparty of information *that the nonparty is willing to provide without a subpoena* would seem to be an abuse of the Judges' subpoena power. The Judges have declined to issue subpoenas where there is uncertainty over "whether the material sought in the subpoenas is unlikely to be obtained and presented to the Judges if the subpoenas are not issued." *Id.* at 5. Here the Services ask the Judges to themselves *prevent* Copyright Owners from obtaining information from a nonparticipant voluntarily, forcing a subpoena request where the Judges would examine whether the material would be obtained without the subpoena, when the only reason a subpoena is needed is because the Judges, at the Services' improper request, prevented the material from being obtained without one in the first place. This would be a nonsensical process that would fly

[6] The Services are also aware that briefing on subpoena requests would require Copyright Owners to explain why certain documents are necessary and thus give the Services the litigation advantage of having advance view into Copyright Owners' arguments without the Services providing any disclosure in return.

in the face of the law and serve only to obstruct, delay and prejudice Copyright Owners.[7] As the Register of Copyrights has explained concerning the Judges' subpoena power:

> Congress stated that it "does not anticipate that the use of subpoena power will become a common occurrence" and that "[t]he CRJs are expected to exercise this power judiciously and only in those instances where they believe a subpoena is necessary to obtain information that the parties have not provided and that the judges deem necessary to make their decision." H.R. Rep. No. 108-408, at 33 (2004).[8]

The Services ask the Judges to gratuitously expand their subpoena activity by requiring participants *who do not otherwise need subpoenas* to nonetheless seek them, which is inconsistent with the judicious use of the subpoena process.

Neither the MMA nor the Register's implementing regulations limit the authority of the MLC to providing documentation only "where the Judges' resolution of the proceeding would be substantially impaired by the absence of such . . . production of documents," which is what the Motion seeks. Moreover, the Judges are never compelled to issue a subpoena regardless of the circumstances, which means the requested relief would improperly make the statutory authority subject to the discretion of the Judges. *Id.* The requested relief would contravene not only the statutory and regulatory authority, but also the Judges' own rules.

[7] Copyright Owners in this brief contemplate situations where the MLC was willing to produce information voluntarily. If the MLC was not willing to produce information voluntarily, then a participant would have recourse to a subpoena commanding the MLC to do so, and would have to meet the standard of 17 U.S.C. § 803(b)(6)(C)(ix) in such situation.

[8] Copyright Royalty Judges' Authority to Subpoena a Nonparticipant to Appear and Give Testimony or to Produce and Permit Inspection of Documents or Tangible Things, 75 Fed. Reg. 13,310 (Mar. 19, 2010) ("[W]hile the statute grants the CRJs the authority to issue subpoenas in certain circumstances, it does not compel them to issue subpoenas in any circumstance.").

## III. The Services' other arguments have no merit

### A. The Services identify no genuine complaint concerning MLC disclosures

Although the Services know precisely what confidential information they have provided to the MLC, they do not offer a valid complaint about disclosure of any specific information (although such complaint would not change the MLC's authority to disclose in this proceeding). Indeed, the Services cannot even articulate a valid hypothetical complaint to MLC disclosures subject to the protective order in this proceeding. Vaguely claiming that "[t]here could be a number of proper objections," the Services only suggest one inapplicable and frivolous objection, "that that the request goes beyond the scope of the limited discovery permitted in CRB proceedings, where discovery requests must be 'directly related to the written direct statement or the written rebuttal statement of that participant.'" (Mot. at 4. n.4, *citing* 37 C.F.R. § 351.5(b).) As discussed above, the scope of the Judges' authority to require disclosure from a participant in discovery has no bearing on the ability of a participant to gather information on their own for use in their direct cases.[9]

This Service footnote reveals again the purpose for the Motion, to obstruct and stonewall Copyright Owners in making their case. If the Services were truly concerned about disclosure of particular information, and believed that they had legitimate grounds to preclude such evidence, the rational course would have been to accept Copyright Owners' offer of compromise to promptly exchange copies of any information obtained from the MLC or DLC. Then the Services could

[9] Nor would it matter if the information gathered originally came from the Services. Copyright Owners can obtain Service reports from many third parties, for example, from the SEC and other agencies. The only distinction between Copyright Owners obtaining information reported by the Services to the SEC and information reported by the Services to the MLC is that the MLC has explicit authority to share confidential information subject to the protective order in this proceeding. Again it is clear that the only subject here is confidentiality, which is fully addressed by *the protective order already in place*.

review any information at issue and move for exclusion if there was any legal grounds. The Services' immediate rejection of the compromise (failing to even make a counterproposal) only reinforces the ulterior motives underlying the Motion.

B. Nonparticipating services are a red herring

The Services' argument that they are protecting the interests of their competitor nonparticipating services is a red herring. The Services argue that without a subpoena, a nonparticipant service would have no notice, opportunity to object or opportunity to review the operative protective order. (Mot. at 4.) In addition to being irrelevant, since the law provides for the disclosure, this argument is unpersuasive because nonparticipant services would not have the right to notice or opportunity to object to a request for a subpoena to the MLC. "The *object* of the subpoena shall be served with the motion and may appear in response to the motion." 37 C.F.R. § 351.9(e). The MLC is the object of a subpoena to the MLC, not nonparticipating services.

Moreover, the protective order in this case is already available for review, as is the regulation governing the MLC's disclosure of information reported by services. All services had an opportunity to comment on that regulation before it was promulgated in 2020, and to object if they felt there was a need for additional restrictions on MLC disclosure of their information concerning the compulsory license. No service offered any objection to the disclosure provision that was adopted, which explicitly confirms the MLC's authority to disclose confidential information to attorneys for participants in CRB proceedings *without any notice or opportunity to object or subpoena requirement*. Services have thus all reported their license-related information to the MLC with full legal notice that federal regulations provide for its disclosure in this

proceeding subject to the protective order. The Motion has no merit as a claimed favor the Services are doing for nonparticipating services.[10]

C. There is no basis or need for the Judges to "confirm" that participants can seek information from the MLC

The Services also request, assuming the Motion is denied, that the Judges "confirm that all participants – including the Services – have the same right to seek confidential information from the MLC, including publisher information." There is no basis to ask the Judges to offer an advisory opinion on this issue. Copyright Owners have never disputed that all participants may seek information from the MLC or that the MLC has the authority to disclose confidential information of publishers to attorneys for the Services in this proceeding, as Restricted information subject to the protective order.[11]

D. The requested alternative relief should be denied

At the conclusion of their Motion, the Services request in the alternative that the Judges order that the MLC should produce requested information to all "[a]ttorneys and other authorized agents" in the same proceeding. This would give the Services an equivalent result to the compromise that Copyright Owners offered to the Services to avoid wasting everyone's time with this frivolous motion. Copyright Owners offered to stipulate that participants would provide to

[10] Pandora argued this point against its current position when litigating *Web IV*, noting that "confidentiality concerns expressed by non-participants to this proceeding" are unpersuasive because, "[a]s the Judges have already ruled, the highly restrictive Protective Order entered here sufficiently addresses those concerns." Reply In Further Support Of Motion To Compel SoundExchange To Produce Negotiating Documents, *Web IV*, eCRB Docket No. 15557 (Dec. 19, 2014), at 9 n.6.

[11] Copyright Owners confirmed to the Services their position on this question prior to the filing of the Motion, further making the request for this advisory opinion unnecessary. Notably, the Services do not allege that they have requested any information from the MLC, let alone that the MLC failed to provide them with any requested information.

other participants copies of information received from the MLC, although such is not required under the statute, the regulations governing the MLC, the rules governing this proceeding or the protective order agreed to by the Services.

The Services thus ask, in the alternative, to be granted the compromise they rejected in order to file this baseless motion. Simply on the principle of incentivizing parties to accept reasonable compromises to avoid wasteful litigation, the relief in the alternative should be denied.[12]

## CONCLUSION

For the foregoing reasons, the Services' motion for a protective order should be denied in its entirety.

Dated: New York, New York
August 30, 2021

Respectfully submitted,

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[12] The Judges also do not appear to have the authority to propound such an order on the nonparticipant MLC. The Judges' limited subpoena power does not extend to ordering nonparticipants to follow particular procedures in their voluntary disclosures of information. Beyond the limited subpoena power, the Judges may "request" production by a nonparticipant. 17 U.S.C. § 803(b)(6)(C)(ix).

# Proof of Delivery

I hereby certify that on Monday, August 30, 2021, I provided a true and correct copy of the Copyright Owners' Opposition to Services' Motion for Protective Order Regarding Data From the Mechanical Licensing Collective to the following:

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